IN THE MATTER OF THE ONTARIO HUMAN RIGHTS CODE,
R.S.O. 1980, c.340.

AND IN THE MATTER OF the complaint of Mr. Chia-Su Wan against Greygo Gardens and Mr. Frank Peter

AND IN THE MATTER OF the complaint of Mrs. Lee Min Chen against Greygo Gardens and Mr. Frank Peter

AND IN THE MATTER of the complaint of Mrs. Shun-Shun Soong against Greygo Gardens and Mr. Frank Peter

BOARD OF INQUIRY

Robert W. Kerr

Appearances:

Ms. Leith Hunter Mr. Shelley Brown (student-at-law)	)	Counsel for the Ontario Human Rights Commission
Mr. Chia-Su Wan	)	On his own behalf
Mrs. Lee Min Chen	)	On her own behalf
Mrs. Shun-Shun Soong	)	On her own behalf
Mr. Frank Peter	)	On his own behalf
Dates of Hearing	)	February 10 and 11, 1982
Place of Hearing	)	Council Chamber, City Hall Windsor, Ontario.

DECISION

PRELIMINARY MATTERS

At the outset of the hearing, counsel for the Commission informed me that it did not intend to present any evidence or claim any remedy against Mr. John Peter Sr. who was named as a Respondent on the complaint forms in these matters, and that Greygo Gardens, also named as a Respondent, was merely a business name and did not exist as a legal entity. Thus, it was the intention of the Commission to proceed only against Mr. Frank Peter. Mr. Frank Peter informed me that Mr. John Peter Sr. was deceased and he objected to proceeding in the latter's absence. In light of the fact that no notice of the hearing had been directed to the estate of Mr. John Peter Sr., and with the consent of counsel for the Commission and of the Complainants, I ordered, pursuant to section 23(1) of The Statutory Powers Procedure Act, R.S.O. 1980, c.484, that the proceedings be amended by removing Mr. John Peter Sr. as a party. While Mr. Frank Peter objected to this, I can see no legal ground for this objection since he was named as a party and notified of the proceedings. This is especially the case since it appears that all of the allegations related to the conduct of Mr. Frank Peter. The name of Mr. John Peter Sr. was only added to the complaints initially because he was the registered owner of the property on which Mr. Frank Peter conducts his business. In light of this amendment, Mr. Frank Peter will be hereinafter referred to as the Respondent.

Counsel for the Commission moved to join the three complaints as a single matter, considering in particular the convenience in conducting the hearing since much of the evidence would be common to all of the complaints. The Respondent objected on the basis that, since he had been charged with

three offences, he had a right to three hearings. On the face of the complaints, it appeared that two separate incidents were involved - one on August 26th, 1978 giving rise to the complaint of Mr. Wan, and the other on August 27, 1978, giving rise to the complaints of Mrs. Chen and Mrs. Soong. In view of this I ruled against joining the complaint of Mr. Wan with the other two. However, to avoid undue repetition at the hearing I ruled that evidence received in relation to each complaint would be considered part of the record, so far as it was relevant, for the purposes of the other complaints. At the Respondent's request, I ruled in favour of hearing Mr. Wan's complaint first since it arose first in time. Having reserved a decision on the joinder of the complaints of Mrs. Chen and Mrs. Soong until the commencement of the hearing with respect thereto, I subsequently ruled in favour of joining the two complaints since it was clear that they arose out of a single set of facts.

As it turned out, the hearing proceeded much as it would have had all three matters been joined. As will be explained below, the Respondent did not attend the afternoon session of the first day of the hearing. Since I had undertaken not to close the hearing until he had an opportunity to give evidence the next day when he intended to be present, it was not possible to conclude the evidence on any of the complaints the first day. Upon the conclusion of the Commission's evidence on Mr. Wan's complaint, it was adjourned to the next morning, and I proceeded to hear the Commission's evidence on the other two complaints. This evidence was also concluded on the first day, leaving only the Respondent's evidence to be heard the second day. Moreover, when the Respondent gave evidence, it was agreed by both counsel for the Commission and

the Respondent that he would give all his evidence at once and then be subjected to a single cross-examination with respect to all three complaints.

At noon of the first day of the hearing the Respondent requested an adjournment until the next day in order that he could attend to the unloading of a truck. Apart from the fact that this did not constitute any legal justification for an adjournment, the Respondent and the other parties received several weeks notice of the hearing in which arrangements could have been made to free themselves from such matters in order to attend the hearing. Moreover, other parties have similar problems with respect to their attendance and would suffer unjustifiable inconvenience if an adjournment were granted for such a purpose at the request of one party. I denied the request for an adjournment, but did adjourn for 1 1/2 hours to give the Respondent as reasonable an opportunity to make other arrangements as was possible at this stage. I also undertook to adjourn the hearing until the next morning at the close of the Commission's evidence in order to give the Respondent an opportunity to present his own evidence and I advised him of his right to have an agent present to represent him if he wished.

APPLICATION OF THE CODE

It appeared from the evidence that the Respondent claims to reserve a rather extensive right to exclude persons who seek to use the "pick-your-own" vegetable farm which is operated by him under the name of Greygo Gardens. Thus, some question arises as to whether he is engaged in providing a service or facility "to which the public is customarily admitted" with the meaning of section 2(1) of the Ontario Human Rights Code, R.S.O. 1980, c.340. Some credence is

given to this argument by the decisions of the Divisional Court in Re Cummings and Ontario Minor Hockey Association (1978), 21 O.R. (2d) 389 and Re Ontario Rural Softball Association and Bannerman (1978), 21 O.R. (2d) 395, that sports teams which limit themselves to members of one sex are, by that reason, not open to the public. In effect, the Divisional Court's reasoning would permit the grossest violations of the intent of The Ontario Human Rights Code for it would allow a place to maintain a private status outside the provisions of the Code simply by maintaining an admission policy which is blatantly discriminatory. However, the decision of the Court of Appeal in the latter case, Re Ontario Human Rights Commission and Ontario Rural Softball Association (1979), 26 O.R. (2d) 134, has, in my view, laid this argument to rest. While the exact basis of the majority decision in the Court of Appeal is unclear, no one on the Court was prepared to adopt the reasoning of the Divisional Court.

In any event, whatever restrictions the Respondent may impose, he does invite the general public to use the farm for a commercial purpose, which is the essence of what section 2(1) is concerned with. Any restrictions are mere exceptions to this general policy. It cannot be said that he invites only individuals specifically selected by him such as would be typical of a private place.

SIMILAR FACT EVIDENCE

As between the complaint of Mr. Wan on the one hand and those of Mrs. Chen and Mrs. Soong on the other hand, the question arises whether the evidence supporting an inference of discrimination in one case may be used to support an inference in the other case. This question does not arise as

between the complaints of Mrs. Chen and Mrs. Soong because the facts are the very same facts, not merely similar facts.

In my view, the correct approach to similar fact evidence is that outlined by D.K. Piragoff's Similar Fact Evidence (Toronto: Carswell's, 1981). As with all evidence, the primary test of admissibility is one of relevance, but similar fact evidence creates a danger of unduly prejudicing the mind of the fact-finder. In light of this, similar fact evidence should be excluded where the risk of undue prejudice outweighs the real probative value of the evidence as assessed in terms of its relevancy.

Insofar as the evidence of the second incident might be used as probative in Mr. Wan's case, the main relevance of this evidence would be that it may show a proclivity on the Respondent's part to engage in some form of discrimination. Where the relevance of evidence is to show proclivity to engage in certain activity, it is generally recognized that the prejudicial effect greatly outweighs the real probative value. Indeed in the courts this realization has given rise to what might be called a "rule of evidence" excluding such similar fact evidence. While I am not bound by such rules, the policy behind the rule is sound and I would decline to accept the evidence of the second incident for this purpose in relation to Mr. Wan's complaint.

The main other possible relevancy of this similar fact evidence would be to rebut some defence such as misunderstanding by reason of the unlikelihood that such circumstances could have happened repeatedly if it were a mere case of misunderstanding. While such a defence was raised in this case, and therefore the similar fact evidence would be relevant, care must be used in

accepting similar fact evidence for this purpose to ensure that there is not some other explanation for the similarity in the facts. Particular concern is shown in cases where the parties who allege the similar facts have discussed their respective situations prior to giving evidence.

Since it did appear that Mr. Wan's wife and Mrs. Soong had conversed about the two incidents shortly after they occurred, I held a voir dire in an effort to determine whether I should allow the use of the evidence from one incident as similar fact evidence in relation to the other incident. I was satisfied on the basis of the voir dire that there was no attempt by the witnesses involved to modify their evidence as a result of such discussions.

However, in my view, the concern about similar fact evidence is not merely one of avoiding deliberate collusion. Rather the concern is that the similarities in the evidence, on the basis of which a probability inference is to be drawn, should be free of a potential influence which might alter the probabilities. Because of the prejudicial impact of similar fact evidence, one should be cautious, rather than liberal, in its use. Because Mrs. Soong did discuss the complaint with Mr. Wan's wife, there is some risk that her evidence was subconsciously influenced, in spite of the fact that there was no intention to collude. Consequently, I decline to use her evidence as similar fact evidence in relation to Mr. Wan's complaint.

This concern would not directly affect the use of Mrs. Chen's evidence in relation to Mr. Wan's complaint. Although Mrs. Chen was not

called during the voir dire, there was no evidence that she had discussed the events with anyone involved in Mr. Wan's case. However, because the events involved in Mrs. Chen's complaint were the same as those involved in Mrs. Soong's complaint, it would be extremely difficult for the same tribunal, having heard all of the evidence, to make a decision giving weight to Mrs. Chen's evidence as similar fact evidence without being influenced by Mrs. Soong's evidence. I think it is possible for a tribunal, at least if it has the benefit of legal training, to hear the evidence with respect to both incidents and yet properly instruct itself to disregard the evidence relating specifically to one incident for purposes of making a decision on the other incident. However, I do not think it is possible for a tribunal, even with legal training, to draw the same distinction between the impressions created upon it by two witnesses recounting the same set of events. In view of the prejudicial nature of similar fact evidence, I conclude that in these circumstances I should not use the evidence of Mrs. Chen as similar fact evidence in relation to Mr. Wan's complaint any more than I should so use Mrs. Soong's evidence.

Since the discussion of the events took place between Mrs. Wan and Mrs. Soong, and did not involve Mr. Wan or his daughter, who testified at the hearing, I have no reason to fear that the evidence of the Wans may have been influenced by the conversation with Mrs. Soong. In any event, as will appear more fully in my discussion of the complaints of Mrs. Soong and Mrs. Chen, the evidence of the Saturday incident is relevant to the Sunday incident in a very direct and forceful manner. For this reason, I do accept the evidence of Mr. Wan's complaint as part of the record for purposes of the complaints of Mrs. Chen and Mrs. Soong.

THE COMPLAINT OF MR. WAN

The principle facts in the complaint of Mr. Wan are not in serious dispute. On Saturday, August 26, 1978 Mr. Wan, his wife, his two children, his sister and her husband, and two university students went for a drive in a station waggon owned by Mr. Wan. All members of the Wan group were of Chinese origin and had come to Canada at various times during the 1970's. Mr. Wan's brother-in-law is a Mr. Chen, but is unrelated to the Mrs. Chen who was involved in the other incident.

The Wan group was attracted to Greygo Gardens by roadside signs advertising it as a place where customers could pick their own vegetables. Greygo Gardens was operated then, as now, by the Respondent.

The Wan group parked in a lot provided for customers of Greygo Gardens and walked over to a vegetable stand adjacent to the parking lot, which was attended by an elderly couple. Several members of the group obtained baskets from one of the attendants for the purpose of picking their own vegetables. They were advised by the attendant to wait in the parking lot for the owner who would drive them into the fields.

The Respondent subsequently appeared on the scene and told the group to leave. Mr. Wan asked why they were being told to leave and was given to understand that the Respondent had experienced difficulty previously with another group. According to the Respondent's testimony, he was referring to large groups in general, but the impression received by Mr. Wan and his daughter was that the Respondent had mistaken them for another specific group which had damaged his property. Since members of the Wan group may not have

have been fully fluent in the English language at the time, it is quite possible that this difference of interpretation was an honest misunderstanding.

The Respondent's instructions to leave were given in a rather loud voice which apparently became louder and angry when Mr. Wan insisted on an explanation. After a brief exchange in which Mr. Wan asked for an explanation, but was not satisfied by the explanation given by the Respondent, Mr. Wan stated to the Respondent that he thought discrimination was involved. At about this stage, Mr. Wan also threw the vegetable basket he had been holding to the ground in the vicinity of the Respondent. The Wan party then got into their vehicle and left.

Mr. Wan's view of the incident was that his group had been mistaken for another group on account of their race and had been denied access to Greygo Gardens because of this. The Respondent's position was that he had decided the Wan group were not desireable customers because of two factors which he uses subjectively to decide whether to admit particular people. First, the group was a large one which arrived in a single vehicle suggesting that they were merely on a pleasure outing and would not treat the property with the desired respect. Secondly, the group had started to walk towards the fields after being told to wait for the Respondent in the parking lot, suggesting that they did not obey instructions and thus might act in a disorderly fashion in the fields. A third factor was also mentioned, although the Respondent indicated that the two factors already mentioned were enough to persuade him to exclude the Wan party. This factor was that the Wan group did not know what vegetables they wanted to pick, suggesting again that they were not the serious, knowledgeable customers that he desired in his fields.

With respect to the second factor mentioned, there is a dispute of fact. The Wans testified that they had remained in the parking lot as instructed, contrary to the Respondent's testimony that they were moving toward the fields. In light of the size of the Wan group, I think it is quite probable that some members of the group may have started to move in the direction of the fields, although I do not doubt the testimony of the Wans that their family had remained in the parking lot. While I think that the interpretation placed by the Respondent upon any such actions was quite unreasonable, particularly since it does not appear that there was any effort to notify customers of the importance of following instructions, I would find in his favour that as a fact some members of the Wan group had moved out of the parking lot toward the fields.

On the other hand, there is no evidence that the Respondent did in fact attempt to ascertain whether the Wan group knew what vegetables they wanted to pick before he asked them to leave. While it does appear that they would have responded in the negative to a question whether they knew what they wanted to pick, if the question was not asked it cannot have been a factor in the decision to exclude them. I find that the decision to exclude was made without this question being asked and therefore this was not a part of the reason for excluding them. Since the Respondent indicated that he really based his decision on the other two factors in any event, this is not a critical finding. While it might reflect adversely on the Respondent's credibility, I am prepared to accept that he raised this third factor as another example of the bases on which he makes decisions and did not mean to infer that it was an additional factor in this actual incident.

I am satisfied with the Respondent's evidence that the size of the group and the fact that some members of it had wandered out of the parking lot were factors influencing his decision to exclude the Wan group from Greygo Gardens. This does not dispose of the matter, however. Under the Ontario Human Rights Code, a violation is committed if a factor such as race or place or origin is one factor influencing the Respondent's actions. It is not necessary that this be the only factor; it is sufficient if it is one of several factors. This principle is now well-established and is based on the decision involving similar language in the Canada Labour Code which was reached by the Ontario Court of Appeal in Regina v. Bushnell Communications Ltd.(1974), 4 O.R. (2d) 288.

By the same token, there may be discrimination based on a factor such as race or place of origin, even though some such individuals are admitted. Where a decision involves a combination of factors, of which race, or place of origin is only one, it may well be that, in the absence of certain of the other factors, the person making the decision is prepared to admit the individuals in question. The law requires that race or place of origin is not be taken into consideration at all, whether alone or in combination with other factors.

In determining whether an improper factor such as race or place of origin influenced the Respondent's decision to exclude the Wan group from Greygo Gardens, I would first observe that it is quite clear that the Respondent makes his decisions to exclude persons in a subjective fashion. He has not established a set of explicit criteria which he applies objectively. Instead he

appears to assess potential customers individually on the basis of criteria which he has set up only within his own mind. Moreover, I am satisfied that he does not apply his own criteria uniformly, although, of course, this would not be unlawful as long as lack of uniformity is unrelated to factors such as race. This lack of uniformity was demonstrated by the Respondent's evidence with respect to one criterion which he has now posted for the information of his customers, that is, a rule against children. It appears that he does not automatically exclude children, but rather uses this as a basis for ordering parties with children to leave if they cause any actual problems after being allowed on the premises.

In light of this, the Respondent's motivations must be subjected to careful analysis to determine whether some ground such as race or place of origin was one of the factors in his subjective decision to exclude the Wan group. Several pieces of evidence are significant in this respect. First, it is apparent that the Respondent does in fact make decisions on the basis of the origins of his customers for he testified that he asks customers their nationality for the purpose of determining which of his vegetables are likely to be of interest to them. Secondly, the report of the human rights officer who first investigated the matter, Mr. Kenneth McCuaig, indicates that the Respondent told him of having problems with "Oriental groups, Arabian groups and Italian groups". This report was entered in evidence by the Respondent and in this respect it is further evidence that considerations such as race and place of origin are taken into account by the Respondent.

In any case such as this it would be useful to compare the Respondent's treatment of other persons in similar circumstances. While the Respondent spoke of frequently excluding persons from Greygo Gardens, he gave

concrete evidence of only two cases. One case was that of a Chinese couple who had overloaded their baskets and the other was that of a Lebanese group which had threatened him with a knife after being ordered to leave. This evidence is as consistent with a conclusion that race or place of origin is a factor in such cases as it is with other explanations. Far more examples would have been necessary of similar cases involving other groups to demonstrate anything by this evidence. Moreover, when counsel for the Commission began to cross-examine the Respondent as to the typical size of groups visiting Greygo Gardens, he became evasive. I can only conclude that straight-forward answers to these questions would not have supported his position that it was his policy to exclude large groups regardless of race or place of origin.

I conclude on the balance of probabilities that the race of the Wan group, as well as its size and the fact that some members had wandered out of the parking lot, influenced the Respondent in his decision to exclude the Wan group. Thus, there was a denial of services and facilities to which the public is customarily admitted because of race, contrary to section 2(1)(a) of the Ontario Human Rights Code.

Because of issues with respect to remedy which are common to all of the complaints, I will return to the issue of remedy after dealing with the merits of the complaints of Mrs. Soong and Mrs. Chen.

THE COMPLAINTS OF MRS. SOONG AND MRS. CHEN

The principle facts in this case are also not in serious dispute. On Sunday, August 27, 1978, Mrs. Soong, her husband, her mother and her two children went for a drive in their car, and they were followed by Mrs. Chen, her husband and her four children in another car. All were of Chinese origin. Mrs. Chen had emigrated to Canada only a few months earlier, while Mrs. Soong had come to Canada in 1970 after studying at university in the United States.

The Soongs were attracted to the Greygo Gardens by signs along the road advertising that people could pick their own vegetables. Greygo Gardens was operated then, as now, by the Respondent.

The Soongs signaled to the Chen car to follow them into Greygo Gardens and both cars drove into the parking lot. Mrs. Soong, Mrs. Chen and Mrs. Soong's mother went to a vegetable stand adjacent to the parking lot and obtained baskets from an elderly couple attending the stand. They stated they wanted to pick green beans and they were directed to a nearby fence gate leading into a field. The remainder of the two groups stayed in the vicinity of their cars, while the three women started toward the indicated field.

Before the three women had reached the field, they were stopped by the Respondent and told to leave. The Respondent testified that his reason for doing so was that he believed they were connected with the group who had been there the day before, that is, the Wan group. He concluded, therefore, that they were likely to cause trouble. Mrs. Soong asked why they were being made to leave and the Respondent advised her that he did not have any

green beans. The Respondent spoke to them in a loud voice and became louder and angry as they temporarily resisted his request to leave. After they started to leave, they observed him speaking to a white couple in a very courteous fashion and telling them where they could find green beans in the field. They continued back to the cars and both groups drove away.

The Respondent testified that he commonly told persons he did not wish to admit to Greygo Gardens that he did not have the vegetables they wanted since this was the easiest way to get them to leave. There is, of course, nothing unlawful in this as long as the real reason for the exclusion does not involve some ground such as race or ancestry.

In light of the Respondent's explanation that he excluded the Soong and Chen groups because he thought they were connected with the Wan group, the evidence of the incident involving the Wans is directly relevant. In comparing the two incidents, I can see only two possible grounds on which the Respondent might have made any such connection. One is that people by the name of Chen were present on both occasions. However, there is no evidence that the Respondent ascertained the names of the members of either party. On the contrary, it is clear that normally the Respondent identifies even regular customers by their faces, more often than by their names.

The only other basis on which any connection could have been made was on the basis of the race of the Soong and Chen groups. It follows that, in connecting the Soong and Chen groups with the Wan group, the Respondent's decision to exclude the Soongs and Chens was influenced by their race. As a

"Q. Were the details of that incident brought to your attention by Mr. Petre?

A. Yes, they were.

Q. And could you explain what those details were?

A, The details were that there were some hollering, swearing toward his superior who was Mr. Bill Day. He refused to do what Mr. Day had indicated at that time and I felt again, here, that since Mr. Dhillon did not listen to Mr. Bill Day that his termiantion would definitely be in order." (Evidence, vol. V, p. 16)

. . . . . .

"Q. Now did Mr. Petre bring the Dhillon incident to your attention, the insubordination with Mr. Day, the alleged insubordination? Did he come directly to your office to discuss that with you?

A. Yes, he did.

Q. Who would have made the final decision to terminate Mr. Dhillon?

A. I would.

Q. It may seem like duplication, but I would like to ask you, Mr. Rosano, what was that decision actually based on?

A. Insubordination towards a superior." (Evidence, Vol. V, p. 17).

. . . . . .

Q. So I am correct that your decision was based on the information Mr. Petre had supplied you with?

A. That is right. I had not cause to question Mr. Petre's investigation.

Q. All right. Now once your decision had been made to terminate Mr. Dhillon did you instruct Mr. Petre to terminate him?

A. Yes, I did.

Q. Do you recall specifically what those instructions were?

A. Just that he should be terminated on insubordination toward his superior." (Evidence, vol. V, p. 19)

Mr. Rosano stated that termination was simply on the basis of the incident with Bill Day, and not because of any earlier situations involving Mr. Dhillon, which Mr. Rosano knew nothing about. (Evidence, vol. V, p. 60).

Mr. Rosano stated that he thought the termination should be immediate, rather than the progressive discipline procedure of the Employee Handbook followed, because it was not a normal situation.

"Q. Why would you feel that this is not a normal situation?

A. Because of the action he had taken against a superior in the warehouse. If this was allowed to linger on or if this was allowed to be handled lightly, I felt that we would lost control. The supervisors and the foremen would, I think, would suffer from any lack of disciplinary action.

Q. Perhaps I could ask it in another way: does the procedure that we are speaking of apply to insubordination to a superior?

A. No, it would not." (Evidence, vol. V, p. 20)

. . . . .

"Q. Do you have any knowledge of any other employees complaining about Mr. Dhillon's conduct in the warehouse?

A. No, I am not.

. . . . .

Mr. Rosano was cross-examined effectively by Mr. Lederer, Commission counsel, on the point of interpretation of the Handbook.

(Evidence, vol. V, pp. 68-76). In my opinion, the factual situation with respect to Mr. Dhillon, swearing at a foreman, is insubordination to a foreman, which is contemplated within the progressive discipline procedure of the Employees Handbook, but is not so extraordinary that it is beyond this regime and a matter for peremptory dismissal.

In cross-examination, Mr. Rosano admitted that in hindsight, the termination perhaps took place too quickly.

> Q. And Mr. Petre told us he didn't discuss the matter with Mr. Dhillon, so apparently you didn't have Mr. Dhillon's side of the argument, so I am asking you now, knowing what you do now, do you consider that the man was fired for sufficient grounds?
>
> Mr. Petre has told us he didn't discuss it with Mr. Dhillon.
>
> A. Well again, at that particular time, the report indicated that it was investigated, that this incident had taken place.
>
> Q. Don't misunderstand me, Mr. Rosano, I am not suggesting you knew at the time, I can't suggest what you knew at the time, I am asking you though, knowing what you know now, having heard Mr. Petre give his evidence, having heard Mr. Petre tell us that he never discussed the matter with Mr. Dhillon, knowing as you must know, that the report which Mr. Petre gave you was based only on what Mr. Day told you, do you still believe, knowing what you now now, that you had enough information for you to fire Mr. Dhillon at the time at which he was fired?
>
> A. Based on today's information, the information we have as of today, I think we probably would have carried on a little further.
>
> Q. And investigate the matter?
>
> A. Yes. Mm hmm.
>
> Q. Can I assume that someone might have at leased discussed the matter with Mr. Dhillon?

A. Yes.

Q. And can I assume, having heard what Mr. Day has said, that it might have been taken a little further with Mr. Day?

A. Yes.

Q. All right. And can I assume that unlike Mr. Petre you might insist on hearing the version of the independent witness?

A. Yes." (Evidence, vol. V, pp. 62-66)

Mr. Rosano testified that no notice was posted on the warehouse bulletin board dealing with racial name-calling, (Evidence, vol. V, pp. 28, 29).

However, counsel for the Respondent referred to the question of notices being posted, and there was not disagreement with his statement on the point by other counsel.

"MR. PERRY: ... One of my concerns is that it has come up in evidence already, that someone had indicated to Mr. Pabla there would be notices posted in the warehouse by the company condemning racial name-calling or at least establishing a policy in the warehouse. Now that it quite true that that was to be done, but that directive was to come from the head office. My concern is we, at no time, the company at no time felt that this investigation had been concluded and there is another letter which I propose to submit in evidence indicating the company agreed to post notices, agreed directly with the Commission to post such a notice, but we were never advised whether or not that was acceptable by the Commission.

It is not that the company is adverse or has refused to post notices or is adverse to that principle. The problem is that at no time did we receive instructions to do it." (Evidence, Vol. V, p. 37).

Mr. Rosano testified that he had heard about some of the complaints of racial name-calling in the warehouse.

"Q. Do you recall Mr. Jahunia complaining to you about racial name-calling by anyone?

A. Yes, he did. He did complain to me.

Q. And just to identify that -- the circumstances who was the person who allegedly did this?

A. He had named three indviduals.

Q. Who were those three?

A. Mr. Cyril Cook.

Q. Cook?

A. Cook, C-o-o-k. Mr. Chris Petre. I think Mr. Ed Robinson was another.

Q. What action did you take as a result of that complaint?

A. I had turned this over to Mr. Del Vecchio, my personnel manager.

Q. Did Mr. Del Vecchio report back to you?

A. Yes, he did.

Q. And what did Mr. Del Vecchio tell you?

A. That he had interviewed the three individuals that were accused of name-calling.

Q. Yes? What else did he tell you?

A. Well, he interviewed the three individuals and that I believe they indicated that they did not do any name-calling. I believe in this particular case here the name-calling was not directly to his face, it was a case of somebody hollering from a distance away, a little distance away. And apparently, these gentlemen were in that particular area. I assume that it was those individuals.

Q. Well am I correct then, that someone did yell something in the warehouse?

A. Yes.

Q. And what was yelled, do you know?

A. I think he indicated that they just hollered, "Paki".

Q. Is it your understanding then that someone in the warehouse yelled, "Paki", but it was denied by those three individuals?

A. Yes.

. . . . .

Q. Mr. Mohan Singh Pabla stated that he complained to you last year about a Mr. Reid and a Mr. McNeil, I believe. Do you recall that incident?

A. I recall that one, yes.

Q. And did you take any action at that time?

A. Yes, I did. I turned it over to the personnel manager.

Q. And who was that?

A. Mr. Del Vecchio.

Q. Did Mr. Del Vecchio report back to you?

A. Yes, he did.

Q. What was that report?

A. That he interviewed the two gentlemen involved and that they indicated that they did -- I think the words was used "fooling around".

Q. So both men, both Mr. Reid and Mr. McNeil admitted that there was some racial name-calling, is that right?

A. Not racial name-calling, no. It was -- they said that they were fooling around and they did mess up Mr. Singh's hair and apparently Mr. Singh did not take too kindly to that. That was the complaint that he made to me.

Q. Did Mr. Del Vecchio indicate to you what instructions he had given those two men?

A. Not to do that again.

Q. All right. Now Mr. Surjit Singh Bhela has testified that he complained to you and to Mr. Del Vecchio that Mr. Oldale had intentionally struck him with his truck.

Do you recall that incident?

A. Yes, I do.

Q. And what action did you take, if any, in that situation?

A. Again this was turned over too to Mr. Del Vecchio to follow through.

Q. And did he report back to you?

A. Yes, he did.

Q. Could you explain what Mr. Del Vecchio told you?

A. That this particular incident did not take place. Mr. Oldale denied that.

Q. Did you get back to Mr. Bhela?

A. Yes, we did. Yes, we did.

Q. Did you speak with him yourself?

A. I believe I did, yes. It was after -- it was after talking to Mr. Oldale.

Q. All right. Mr. Bhela claims that a Mr. Negus called a meeting of seven to eight East Indian employees in the warehouse to discuss the problem involving Oldale and Mr. Crombie. Are you aware of that meeting?

A. No, I am not, no.

Q. You are not aware of it?

A. No, I am not." (Evidence, vol. V, pp. 39-43)

However, Mr. Rosano said the subject of name-calling had never been raised at an Employees' Committee meeting attended by him, (Evidence, vol. V, p. 57), even though East Indian employees have been on the Committee (Evidence, vol. V, p. 59); however, East Indian membership on the Committee seems to be a recent development (Exhibits #18, #19).

Mr. Rosano distinguished between the situation involving harassment of Malkit Singh Pabla and the incident leading to the firing of Sucha Singh Dhillon.

"Q. Okay. But you heard about the ruffling of the hair?

A. Yes.

Q. So you have got somebody again, physically abusing a fellow warehouseman, he is touching him, messing his hair up?

A. Okay.

Q. Okay. Now, and in this case you say that Mr. Del Vecchio interviewed the person. They admitted that they were fooling around, they admitted they were messing his hair, so they admitted to this physical treatment and they were told not to do it again, is that right?

A. Yes.

Q. Now, in Mr. Dhillon's case, okay, we have got somebody, who without any prior complaint, as we have been over it before had an argument with a foreman and swore at him and was fired.

Now, Mr. Rosano, can you honestly tell me that treating somebody -- dealing with somebody physically is less serious than the kind of verbal argument that took place between Mr. Day and Mr. Dhillon?

A. The physical contact here was taken in the context of playful actions. He wasn't actually hit or hurt in any way, maybe feelings were hurt, yes, but physical hurt, no.

Q. Did Mr. Pabla think it was funny when he came to speak to you about it?

A. No, he didn't.

Q. All right. So who thought it was funny?

A. I believe the indication here, was that it was just -- I think the words was used, "fooling around".

Q. All right. So you have got the aggressors who think it is pretty funny, okay; the person who was attacked, he takes it seriously.

A. Right.

Q. And you are prepared to accept that it was just foooling around and you let it go without a warning?

A. Mm hmm.

Q. Yet you deal with a man in Mr. Dhillon's position, where all they were talking about is a verbal argument and have him fired.

Now again, does that seem to you to be fair, to be an equitable treatment of two different situation?

A. Again here, I think it is a case of dealing with, in the case of Mr. Dhillon, I treated it as insubordination to a superior, where the other one was just a case of some kind of a playful action.

Q. Well, again, Mr. Pabla didn't think it was playful.

A. True.

Q. Would you not agree with me, that, for it to be true, that all participants would have to find it such?

A. I guess it would.

Q. And it would be pretty easy for what I determined agressors to think it was funny since there was no direct harm to them, but it must have been pretty frightening for Mr. Pabla, do you not think? He was obviously frightened, He came to see you...

A. He was disturbed about it." (Evidence, vol. V, pp. 102-104).

Moreover, Mr. Rosano knew at the time that Mr. Pabla regarded the harassment of him as racially motivated.

"Q. So you took it in terms of to be discriminatory.

A. All right.

Q. And you took it that way when you were first advised of it by Mr. Pabla?

A. Right.

Q. All right. So you did have a notion that there was discrimination or discriminatory aspect to it when you received the complaint?

A. He indicated that so...

Q. He told you that specifically, didn't he? Mr. Pabla?

A. He felt that it was in that light.

Q. All right. So you were made aware of that potential connection when Mr. Pabla came and complained to you?

A. Yes." (Evidence, vol. V, pp. 109-110)

. . . . .

"Q. I see. Now with respect to the complaints made against Tony Oldale I understand that four persons came to see you with respect to this individual, is that right?

A. Who was the individual involved?

Q. Tony Oldale.

A. Okay. Tony Oldale, three people came to see me." (Evidence, vol. V, p. 140).

. . . . . .

"Q. He didn't. Okay, now these individuals spoke to you and I think you said you referred their complaint to Mr. Del Vecchio, is that correct?

A. Yes.

Q. And he reported back to you and you took no further action because you thought that the complaints were not substantiated?

A. No, it was my recommendation on that to follow through with the investigation. We do not have a full report.

Q. Oh, this is the one you don't have a final report on after all the months. I see.

I see that you took quick action with respect to Sucha Singh Dhillon. The very same day you got the complaint you took action but you allowed this one to run into weeks before you took any action. Is there a reason for that?

A. I think the situations are different here.

Q. Well it involves employees, both of them involve employees, don't they?

A. Oh, everything involves employees.

Q. Is it different because in one case the man is East Indian and in the other case he wasn't?

A. Absolutely not.

Q. Well what is the difference?

A. One was involving insubordination toward a superior.

Q. Yes.

A. And the other one was an action that had been taken within the warehouse as to -- this was one individual reportedly bumping into a truck.

Q. Well, they put it to you in the context of a racial assault, you don't think that is serious that you should take action immediately?

A. We did take immediate action. It is being investigated.

Q. But you took immediate decisive action in Mr. Dhillon's case?

A. I took immediate ....

Q. And there in Dhillon's case you only have one report.

A. We took immediate action with the other case as well.

Q. And in that case and in this case with Tony Oldale you had three -- in your version and in mine, as I suggested to you, four persons who complained. Do you think that there is a disparity in treatment there where you have -- where you took action based on one report, which you knew wasn't thoroughly investigated?

A. Well...

Q. And there you have three or four complainants coming to you and you just continue an investigation.

A. In the case of Dhillon, what was established at that time, it was insubordination. In this particular case with Tony Oldale there was an indication that there wasn't any stock available. It was a case of one truck bumped another and that one hasn't been established yet.

Q. So then, what you are saying is that on a slight matter you do a great deal of investigation, in your opinion, but a serious matter you take decisive action right away. Is that what you are saying.

A. A great deal of investigation?

Q. Well I take it...

A. Like I said...

Q. Mr. Del Vecchio is investigating still, so he is doing a great deal of investigation?

A. I don't know what is being done. It has been turned over to him to look after it.

Q. Well why didn't you make a similar investigation in the case of Mr. Dhillon?

A. There was an investigation made by the personnel manager at that time and his report came back and indicated this actually happened." (Evidence, vol. V, pp. 140-143)

However, as of the time of the hearing Mr. Rosano was of the continuing view that there was not any real problem of racial discrimination within the warehouse.

"Q. ...Now, what I am asking you is whether or not you don't perceive that there is a general problem in your warehouse involving the use of racial discriminatory acts and words?

A. No, I don't.

. . . . .

BY MR. LEDERER:

Q. So in your view, since you don't see the problem, I presume that it doesn't require any particular action from you as manager, in your view?

A. I don't follow your line there.

Q. Well you don't see a problem, so you are not going to do anything is what I am saying.

A. I guess you could put it that way, yes." (Evidence, vol. V, pp. 123-124)

. . . . . .

Q. Very well. Now, I think, as I understand it you told Mr. Lederer that you don't think -- I am just paraphrasing, I am not saying these are your words -- but, you don't think the racial problems of the warehouse were widespread enough or acute enough to constitute a problem. You don't recognize it as such?

A. Not a serious problem, no.

Q. Not a serious problem or not a problem?

A. Not a problem.

Q. Not a problem. Well I want to know then, I want to know then if you feel that all the persons who have complained, who you have been hearing complaining, in your opinion if if is an imaginery problem rather than a real one...

A. I guess I could only react on the, if you want to call it, "complaint" that was directed to me. They are the only ones that I know of.

Q. Yes. And they were not enough for you to recognize this as being any problem then, or not serious enough, which is it? Is it they were not serious enough or that they...?

A. I think it was a case of not serious enough.

Q. Not numerous enough? Not so many complaints?

A. That's right.

Q. Is that it?

A. Right. Depending on what action you want to take. The individual complains and we look into and investigate it. I don't know what you could do beyond that." (Evidence, vol. V, pp. 137-138).

In reply, Mr. Dhillon said he never threatened anyone with a toy broom, (Evidence, vol. VI, p. 161), and that he did not get angry with, or swear at Mr. Day (Evidence, vol. VI, pp. 164, 165). He denied that Mr. Petre had warned him about his threat of stabbing, as set forth in Mr. Petre's records (Exhibit #6) (Evidence, vol. VI, pp. 173, 177).

Mr. Sonny Pabla testified that after the commencement of the hearing, to the date of his reply evidence (two months later due to an adjournment) the washroom walls were cleaned up, and that racial name calling "never happen now" and there are no longer complaints by the East Indian employees with respect to name calling. (Evidence, vol. VI, pp. 177, 178). He testified that "Everybody is friendly to each other", and that this harmony has come "from the discussion of those problems" between the co-workers. (Evidence, vol. VI, p. 178, 180).

3. Findings of Fact with Respect to the Evidence

I shall now summarize the issues arising from the evidence, and also make specific findings on the evidence, in so far as I have not done so already to this point in the decision.

(1) The holidays' issue

There was a suggestion of discrimination with respect to the East Indian employees on the basis that they could not easily obtain for holidays the longer periods (four to six weeks, through extending the normal, paid vacation of two weeks by an unpaid period) required to travel to India. Apparently, the Respondent was very flexible in this regard historically, but had changed its vacation policy in recent years. However, management gave evidence that it was necessary to sometimes constrain the length of holidays at certain periods of the year to meet the production needs of the Respondent. (Evidence, Vol. V, pp. 47, 49, 53, 54, 55, 165; Vol. VI, p. 189; Exhibit #14). I accept this evidence, and find that on all the evidence, the Respondent's vacation policy was administered for proper business reasons, without discrimination toward East Indian employees, and indeed, with reasonable accommodation for its East Indian employees' needs. (Evidence, Vol. II, pp. 167-170; 180-187; Exhibits #14, #17, #18).

(2) Discriminatory treatment issue with respect to order filling

Another issue was whether workers who are East Indians were sometimes given more onerous orders to fill than white order filler warehouse employees. I think there may have been some isolated incidents historically to support this accusation, but it is clear that, to the extent a discriminatory practice may have existed or seemed to exist at one time, that management introduced a modification to the order filling system to make sure that fairness was done and seen to be done in respect of this problem. (Evidence, Vol. II, pp. 159, 160).

(3) Racial slurs and insults on the washroom walls issue

There was much evidence about the racial insults on the washroom walls. It is not disputed that there was a considerable amount, although it seems there was a great deal of graffiti generally on the washroom walls. (Evidence, Vol. II, pp. 118, 119, 148, 149). The evidence was that the walls were regularly washed, painted in the "normal rotation" (Evidence, Vol. V, pp. 80, 81), and that management would dismiss any employee caught writing on the walls. (Evidence, Vol. III, p. 41). This despicable practice of racial insults upon the washroom walls is difficult to control, but certainly not condoned by management. Moreover, I do not think there was sufficient evidence in the instant case to say that management did not take reasonable steps to control the problem. There are practical limitations upon the controls it might impose.

(4) The issue of Sonny Pabla's demotion

There is the issue of Sonny Pabla's promotion to foreman and subsequent demotion. Only the vaguest of reasons were given for the demotion (that Mr. Pabla had some sleepless nights and/or he might not be able to control the men under him (Evidence, Vol. III, pp. 52, 53, 60, 72, 73; Vol. IV, p. 40)). His demotion appeared to be almost a whimsical decision, and involved no communication between his supervisor, who regarded him as performing very satisfactorily, and management. (Evidence, Vol. III, pp. 51-63; Vol. V, pp. 96, 97). Sonny Pabla was the only East Indian worker ever promoted (Evidence, Vol. III, p. 71) and seemed to have been at least as productive as his two replacement successors in the position (Evidence, Vol. III, p. 74). His attendance at that time was satisfactory (Evidence, Vol. III, p. 74), although at a later point, starting in 1974, his record was certainly questionable from the standpoint of absenteeism and he was even absent without leave on an occasion, although he said this was due to a sudden illness in his family (Evidence, Vol. IV, pp. 99, 100; Exhibit #10). While the demotion of Mr. Pabla is not in itself in issue in this hearing it was asserted as being due to discrimination and therefore, a similar fact to consider in respect to Mr. Dhillon's complaint.

However, in my view there was not enough evidence to suggest that Mr. Pabla was demoted because he was an East Indian. A critical fact to note is that the general manager who promoted Mr. Pabla was the one who subsequently demoted him. Rather, the decision to demote appears to have been done for vague, whimsical reasons, almost on

what might be said to be a 'gut feeling' basis by management (seen somewhat generally from the evidence in this Inquiry as typifying its relations with its employees), without any real evaluation of the worker's performance, and without any meaningful communication with either him or his immediate supervisor as to his job performance. Hence, the demotion was an unfair decision, at least in terms of a lack of fair and meaningful process, but on the evidence in this Inquiry, was not, I find, an act of discrimination upon a ground prohibited by the Code. As for a reason why there has not been a promotion of Mr. Pabla in the intervening years subsequent to Mr. Pabla's demotion, I do not find any evidence to suggest he is being discriminated against in this regard on a prohibitory ground. (See in part Exhibits #19 and #20 and the evidence in respect thereof).

(5) The dismissal from employment issue with respect to the Complainant

With respect to Mr. Dhillon's dismissal, on all the evidence I find that it was, in my opinion, clearly unfair to Mr. Dhillon and unjustifiable in the circumstances. Mr. Dhillon was not given a chance to explain what happened, he was, at least, an average worker who had been an employee for some time, and while he was insubordinate to his foreman in swearing at him (and I have no doubt in accepting Mr. Day's evidence on this point, and rejecting Mr. Dhillon's denial that he swore) the penalty of dismissal was far out of line with Mr. Dhillon's offence. Moreover, any real investigation by Mr. Rosano of the situation before peremptorily dismissing Mr. Dhillon, would have made him

realize that Mr. Dhillon had met his quota for production and thus had a reasonable answer to Mr. Day's legitimate enquiry of him, and that the only problem was that Mr. Dhillon had shown volatile anger and swore at Mr. Day. Any enquiry and sensitivity toward the situation would have resulted in the realization that Mr. Dhillon, while clearly wrong in the manner of his response to Mr. Day, was very much up tight because of the general work environment due to his perception of racial harassment in the workplace, as evidenced by the undisputed evidence of Mr. Day himself that Mr. Dhillon felt that in the particular situation he was being discriminated against by Mr. Day. Mr. Day in fact, and I so find on the evidence, was certainly not discriminating against Mr. Dhillon. However, the general work environment of racial name-calling and related racial abuse, was at least one significant factor in Mr. Dhillon's psychological volatility. That is, the name-calling environment was a factor without which (a causa sine qua non) Mr. Dhillon would not have precipitated his own dismissal.

However, Mr. Dhillon was the active cause (the causa causans) of his own dismissal, and unfairly as he was treated by Mr. Petre and Mr. Rosano, neither had the intent of dismissing him because he was an East Indian. Rather, Mr. Petre, unfortunately, had no expressed opinion of his own, but was simply a messenger to Mr. Rosano. Mr. Rosano is a strong and forceful general manager who wants to run a strictly disciplined warehouse with respect to the hierarchial structure. That is, he was using Mr. Dhillon as an example to the warehouse that he was not going to tolerate any insubordination with respect to a superior foreman or supervisor, and even though Mr. Dhillon was the first employee dismissed for swearing at a supervisor in some fifteen years (Evidence,

Vol. V, pp. 154, 155). While Mr. Rosano acted too quickly, was unfair, and went against the company's own written guidelines as I interpret them, he acted, as I find, not because the hapless and unfortunate employee was an East Indian, but rather simply because Mr. Rosano wanted to show his employees he was simply not going to tolerate any form of insubordination of a foreman or supervisor. Moreover, Mr. Rosano honestly held the view that he was acting properly and within the company's written guidelines as he interpreted them. His preemptory, unfair decision in dealing with an employee was not unlike the general manner in which the employees (such as Mr. Pabla in the way in which the decision took place that he be demoted as foreman) were apparently dealt with by management, considering all the evidnece in this Inquiry. The overall impression from the evidence was that this warehouse was managed with little regard for employee interests beyond that simply of the immediate maximization of production. The existence of a responsible union and a typical collective bargaining agreement would have ameliorated the terms of employment (promotion and dismissal, and grievance, procedures and penalties) considerably.

However, I think the evidence in this Inquiry typified the labour relations style of Respondent's management generally and the offended, dismissed employee could just as easily have been a white employee rather than Mr. Dhillon (or Mr. Pabla with respect to his demotion). Moreover, an employee such as Mr. Dhillon must control his anger in respect of his work environment, and his swearing (see Exhibit #5) and insubordination is not excused because of the hostility he receives within his work environment. Mr. Dhillon must hold himself ultimately accountable for his intemperate outbursts and bear the very unfortunate consequences that follow from his loss of control.

(6) The issue of racial slurs and racial name-calling, or verbal racial harassment, with respect to both the Complainant and with respect to the Respondent's warehouse generally.

With respect to the racial name-calling, I find, considering all the evidence, that it was widespread within the warehouse, and on a continuing basis. That is, we are not talking simply about occasional, isolated incidents. Undoubtedly, the ambiance of a warehouse in Toronto, bringing together many men of very diverse backgrounds doing physical labour, is not going to be the equivalent of a Sunday School picnic. It will be common to have profanity or 'rough talk' as one might call it, as an ordinary part of the conversation, and whatever one's views as to the niceties of such an environment, one cannot ignore reality.

I am sure that the Respondent's warehouse was not exceptional in this regard, but rather is typical. However, the 'rough talk' in the Respondent's warehouse contained racial epithets and insults, that is, verbal harassment of a racial nature and on a regular basis. Occasionally this verbal harassment was coupled with mild physical harassment (for example, the ruffling of hair incidents in respect of Malkit Singh Pabla). Whether the truck-pushing incident involving Mr. Dhillon was truly intentional or not, the actions of those who bumped him after the fact (laughing at him and not apologizing, or not seeming to be sincere in apologizing, for the accident) together with the general warehouse climate left Mr. Dhillon with the not unreasonable inference that he was being abused in that incident because he was an East Indian.

The overall impression given by the evidence on the preponderence of evidence is that the warehouse was not just a 'rough' place in which

to work, with demanding physical labour for men at the lower end of society's income scale, coupled with swearing and rough language, but that the internal 'pecking-order' within the warehouse placed the East Indian workers at the bottom of the informal, internal status for warehousemen. They were the butt of many of their co-workers agressiveness and hostility, because of their race. I do not want to generalize - undoubtedly the majority of the white workers were friendly, or at least tolerant, toward the East Indians. However, there was a solid number, if an overall relatively small minority, of white workers who would insult the East Indian workers on a racial basis. No doubt, the word "Wop" was heard as often as "Paki" within the warehouse. (Evidence, Vol. III, p. 100). However, the fact of racial insults toward one group does not justify racial insults toward another. As well, the fact that other groups, as new Canadians, experienced racial prejudice historically with legal impunity to those who discriminated, and the receivers of the insults simply had to tough it out, does not excuse racial discrimination now prohibited by the Code in the contemporary work environment.

In my view, there was no intent on the part of management, in particular, senior management (represented by Mr. Petre and Mr. Rosano) of the Respondent, to discriminate against the East Indian workers. Mr. Petre was responsible for hiring the workers who appeared as witnesses, and I accept the evidence of Mr. Petre and Mr. Rosano that they personally had no intent at all to discriminate with respect to either Mr. Dhillon, the Complainant, or East Indian workers generally within the warehouse. Nor did they actively condone verbal or other racial harassment by the white workers who engaged in same, and certainly they did not engage in it themselves.

However, Mr. Petre and Mr. Rosano both knew, or should as reasonable men acting as management have known, that there was regular, and significant, verbal racial harassment of East Indians within the warehouse. They did know. However, while they certainly did not either approve of, or support the practice, they as management did not take reasonable steps to put an end, or at least minimize, the racial abuse. There was no real, effective, discipline with respect to the instances of offending white employees that came to their attention from time to time. The overall attitude was that verbal racial abuse was an inherent, if unsatisfactory, incident of the warehouse work environment. No attempt was made to set up effective lines of communication with the East Indians as a minority group within the warehouse, or to bring a real harmony to the groups feuding on racial lines, and to make the environment more palatable (and incidentally by doing so, more productive). The unofficial East Indian leader within the warehouse, Malkit Singh Pabla, is an honest, reasonable, conscientious worker. I found him to be the most impressive, in terms of the evidence he gave, of all the witnesses before the Inquiry. I accept his evidence unreservedly in that, unlike all the other witnesses, there was no aspect of self-serving rationalization. There was a general racial problem within the warehouse, Malkit Singh Pabla advised management there was and he could and should have been utilized to search for better understanding and cooperation. Instead, he personally was much abused by one white individual (and because he was seen as a defenceless East Indian) with no real discipline directed against the offending individual.

Verbal racial harassment, through name-calling, in itself, is in my view prohibited conduct under the Code. The atmosphere of the workplace is a "term of condition of employment" just as much as more visible terms of conditions, such as hours of work or rate of pay. The words "term or condition of employment" are broad enough to include the emotional and psychological circumstances in the workplace. There is a duty on an employer to take reasonable steps to eradicate this form of discrimination, and if the employer does not, he is liable under the Code. I find on the evidence that the Respondent (its management knowing of the racial name-calling problem) did not take reasonable steps to eradicate such form of discrimination toward the East Indian employees.

I might add that the evidence suggested a great deal of swearing, and even some retaliatory name-calling, by some East Indian employees. There cannot be any justifiable excuse for this. Two wrongs not only do not make a right, but also usually exacerbate the initial unfortunate situation. Racial harmony is a two-way street and requires the good sense and understanding of everyone concerned. All employees must cooperate. In a warehouse such as that of the Respondent, it also requires management to take reasonable steps by way of active intervention, to ensure that there is not racial discrimination toward any person or group.

4. The Law - Racial Name-Calling and Verbal Racial Harassment as Discrimination

The Ontario Human Rights Code, Revised Statutes of Ontario, 1970, Chapter 318, as amended, provides:

> 4.(1) No person shall,
>
> ...
>
> (g) discriminate against any employee with regard to any term or condition of employment,
>
> because of race . . . of such person or employee.

This clause expressly prohibits the imposition of more, or less, onerous duties of employment on employees according to their race. Likewise, it explicitly prohibits the differential distribution of the rewards of employment to employees according to their race. In my view, paragraph 4(1)(g) should also be interpreted as a prohibition against unwelcomed racist remarks made by employers or other employees, the words "term or condition of employment" being broad enough to include the emotional and psychological circumstances in the workplace. An employee may be found to have been discriminated against even though that discrimination did not take a visible form in the employee's hours of work, duties, advancement, or pay cheque.

This question was touched upon in a recent Ontario case: Cherie Bell v. Ernest Ladas (Aug. 12, 1980) 1. C.H.R.R. D/155. That case dealt with the issue of whether or not s. 4(1)(g) of the Code could be read as a prohibition against sexual harassment in the workplace. The Board of Inquiry (Mr. O. B. Shime,

Q.C.) found that sexual harassment was indeed prohibited, discriminatory conduct in the workplace. In so finding, the Board stated:

> The forms of prohibited conduct that, in my view are discriminatory run the gamut from overt gender based acitivity, such as coerced intercourse to unsolicited physical contact to persistent propositions to more subtle conduct such as gender based insults and taunting, which may reasonably be perceived to create a negative psychological and emotional work environment. There is no reason why the law, which reaches into the workplace so as to protect the work environment from physical or chemical pollution or extremes of temperature, ought not to protect employees as well from negative psychological and mental effects where adverse and gender directed conduct emanating from a management hierarchy may reasonably be construed to be a condition of employment.

Thus, in deciding that the Code could be interpreted as providing a prohibition against sexual harassment, the Board also stated that that form of discrimination may be manifested merely in a verbal way; there needn't have been any tangible employment consequences for the sanctions of the Code to apply.

By analogy, it can be argued that the same ought to be true where employees are subjected to racial slurs. If the Code prohibits "gender based insults and taunting", then it should equally prohibit verbal abuse based upon a person's race, even where the specific terms of employment are not observably affected.

In Sylvia Fuller v. Candur Plastics Ltd. (Robert Kerr, May 26, 1981) the issue arose in a fact situation not unlike that in this hearing. There, the complainant, a Black woman of Jamaican origin, was dismissed after

slapping her shift foreman. The entire incident was the result of the following sequence of events: A co-worker of the complainant had apparently called the complainant a "monkey" and had slapped her on the face. The complainant went to the foreman to complain about the incident. She had some difficulty explaining the event to the foreman because of a language barrier, and so demonstrated it to him by slapping him on the face. The complainant was subsequently dismissed.

The Board found that the decision to dismiss the complainant was based partly on the complainant's race, colour and place of origin and therefore, a breach of section 4(1)(b) of the Code had indeed occurred.

With respect to the verbal remark made to the complainant, the Board stated that it was merely "an isolated offensive outburst" and therefore, in itself, was not a ground for a complaint under the Code. In making that ruling, the Board relied on the much earlier decision in the case of Simms v. Ford of Canada (Professor, now Mr. Justice Kreever, June 4, 1970).

In the Simms case, a Black employee in the respondent's plant was performing his duties in a less than satisfactory way. When approached by the shift foreman about his performance, the complainant initiated an argument in the course of which the foreman called the complainant "nigger. The complainant subsequently received a suspension.

The Board found that the suspension was motivated by the complainant's insubordinate conduct, and not by any racial discrimination. The Board went on to consider whether a remark such as was made to the complainant could be grounds for a complaint in itself:

> "In my opinion, the word "discriminate" in the context of the Code means to treat differently, or in the particular context of Section 4(1), to make an employee's working conditions different (usually in the sense of less favourable) from those under which all other employees are employed. Thus, to permit, even passively, a black employee in a plant where the majority of employees are white to be humiliated repeatedly by insulting language relating to his colour by other employees, even, I would go so far as to say, by non-supervisory employees, would be to require the black employee to work under unfavourable conditions which do not apply to white employees. In such circumstances, the employer has an obligation, imposed by s.4(1), to remove the cause of the discriminatory working conditions and police the prohibition against the humiliating conduct or language."(p.18).

Thus, it is clear from the Simms case, that verbal abuse in itself can constitute a breach of the Code. The Board held though, that since the remark there was isolated, in the context of an argument and precipitated by the Complainant's insubordinate behaviour, no breach of s.4(1) had occurred.

Mr. O. B. Shime suggested in the Cherie Bell case that the Code could reach into the environment of the workplace to redress discriminatory behaviour. This is, in fact, how the courts in the United States have proceeded in interpreting the Civil Rights Act of 1964, as amended by the Equal Employment Opportunities Act of 1972 42 U.S.C. ss. 2000e et seq.

Subsection 2(a) of the latter Act provides:

> 2. (a) Employers. It shall be an unlawful employment practice for an employer -
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . race . . .

As in Canada, the matter of verbal abuse as discriminatory conduct has arisen in sexual harassment cases. The most recent reported case on the issue is Bundy v. Delbert Jackson 641 I.2d 934 (1981). There, the Court held that a complainant needn't show that any employment benefits were denied to her because of her unwillingness to comply with the sexual demands of an employer. Rather, it need only be shown that the working environment has been "poisoned" by unwelcomed sexual harassment. The Court was extending the principle laid down in previous cases that a complainant must show that lack of sexual compliance on her part resulted in some kind of adverse employment consequences: Munford v. James T. Barnes & Co. 441 F. Supp. 459 (1977).

In arriving at the result in the Bundy case, the Court in fact relied on cases where an employee had been subjected to ethnic or racial slurs in the workplace:

> Racial slurs, though intentional and directed at individuals, may still be just verbal insults, yet they too may create Title VII liability. (p. 945)

A leading case on that issue is Rogers v. Equal Employment Opportunity Commission 454 F. 2d 234 (1971), cert. denied, 406 U. S. 957 (1972). In that case, the complainant was a Hispanic woman employed in an optometrist's office. Her employer had engaged in a practice of segregating patients by national origin and treating Hispanic patients in a discriminatory way. The complainant alleged that the poor treatment of Hispanic patients

created an offensive work environment for her, and that she was entitled to have her complaint redressed. The issue before the court was whether the complainant herself had really been "aggrieved" such that the Equal Employment Opportunities Commission could even investigate the matter. The Court ruled that even though the complainant had not been subjected to discriminatory remarks herself, the remarks directed at Hispanic patients created an adverse work environment that the Act prohibited.

Goldberg, C. J. stated:

> Time was when employment discrimination tended to be viewed as a series of isolated and distinguishable events, manifesting itself, for example, in an employer's practices of hiring, firing, and promoting. But today employment discrimination is a far more complex and pervasive phenomenon, as the nuances and subtletites of discriminatory employment practices are no longer confined to bread and butter issues (454 F. 2d at 238)

Thus, not only could verbal abuse give rise to a complaint under the Equal Employment Opportunities Act, but the complainant needn't be the person at whom the remarks were directed. The Court in Rogers gave a very wide meaning of "terms, conditions or privileges of employment" in s. 2(a)(1) of the Act. That phrase was held to include the psychological and emotional aspect of the work environment:

> (T)he phrase "terms, conditions or privileges of employment" . . . is an expansive concept which sweeps within its protective ambit the practice of creating a work environment heavily charged with ethnic or racial discrimination. . .One can readily envision working environments so heavily polluted with discrimination as to destroy completely the emotional and psychological stability of minority group workers . . .(p. 238)

Obviously, the Court in Rogers was dealing with a situation where racial slurs were extremely pervasive in the workplace. The case of Cariddi v. Kansas City Chiefs Footbal Club, Inc. 569, F. 2d 87 (1977), dealt with a situation where merely isolated discriminatory remarks were made to an employee.

Mr. Cariddi was employed as a supervisor of ticket takers at the respondent's football stadium. His supervisor apparently called him "dago" or "Mafia" on occasion, but not to the extent that a pattern of abuse existed. The complainant was eventually fired for cause. He then brought an action under Title VII of the Civil Rights Act claiming that the derogatory remarks had spoiled his work environment within the principle laid down in the Rogers case.

The Court held that the remarks were made casually and not in a widespread manner. The degree of "pollution" of the workplace did not satisfy the quantum that had been present in the Rogers case. Also, the Court placed some weight on the surrounding circumstances. That is, that the complainant had been dismissed for cause and that the respondent hired many Italian-Americans and therefore wasn't really prejudiced against them. Strictly speaking though, those facts ought to have been irrelevant to the issue of whether or not the employer had acted in a discriminatory fashion during the course of Mr. Cariddi's employment.

In Gray v. Greyhound Lines East 545 F. 2d 169 (1976), a group of black employees alleged that the respondent's treatment of them was discriminatory. Prior to 1965, the respondent had refused to hire blacks as bus drivers. The complainants argued that the respondent's present

seniority system perpetuated that previous policy by keeping blacks in junior positions. Further, they argued that even though the employer had begun to hire blacks, those that were hired were treated poorly. Black employees, it was alleged, were subjected to "arbitrary discipline", "discriminatory treatment" and "psychological isolation". In other words, the employees felt that their employment climate was interfered with because they were black, notwithstanding the respondent's present hiring practices.

The Court held that the employees had a right, pursuant to the Equal Employment Opportunities Act, to a working environment free from racial intimidation. As such, they had standing to bring a class action against the employer on behalf of all of its black employees.

That principle was extended even further in the case of Waters v. Heublein, Inc. 547 F. 2d 466(1977). There, it was held that a white employee had standing to bring an action against her employer on the grounds that the respondent verbally abused its black employees. The Court stated that the complainant had a statutory right to a work environment free of racial prejudice, even though she was not discriminated against herself.

The right of all employees to have a workplace free of the emotional and psychological manifestations of racial prejudice has also been upheld in the United States by the Equal Employment Opportunities Commission. It is clear in its decisions that white employees, for example, have standing to initiate actions against employers for

their verbal abuse of black employees: EEOC Decision No. 70-09, CCH EEOC Decisions P6026.

Further, the EEOC has imposed a positive duty upon the employer to rid the workplace of racial slurs exchanged between its employees. Thus, where employers acquiesce in the discriminatory remarks made by white employees against fellow black workers, the Commission has found the employer to be liable: EEOC Decision No. 71-969, CCH EEOC Decision P6193. The employer has a duty to keep the work environment free of racial insults and must take reasonable steps to stop them. If an employer acquiesces in racist statements made by an employee, the employer will be liable to the aggrieved employee: EEOC Decision No. 72-0779, CCH EEOC Decisions P6321.

In summary then, the United States' position with respect to verbal discrimination has been to recognize it as prohibited conduct under the Equal Employment Opportunities Act. The cases emphasize that the atmosphere of the workplace is a "term, condition or privilege of employment" just as much as is hours of work or rate of pay. There is a duty on employers to take reasonable steps to eradicate this form of discrimination and if they do not, they will be liable under the Act. That reasoning has been applied to sexual harassment cases where the working environment of women may be spoiled by the unwelcome sexual solicitations of employers.

In Canada, the issue as to whether racial slurs constitute a breach of the Code has been discussed both in the context of race discrimination cases (Fuller; Simms), and a sexual harassment case (Cherie Bell). Thus,

the situation in Canada is similar to that in the United States. However, the Canadian race discrimination cases have not had present the quantum of verbal abuse in the workplace that has been determined to be necessary before the prohibitions of Human Rights legislation may be invoked. The Fuller and Simms cases are similar in that respect to Cariddi in the United States. Thus, to date there appear to be no Canadian cases where bigoted remarks alone in the employment environment have been redressed by actions under Human Rights statutes.

The abundance of cases in the United States has led to a certain sophistication in dealing with the more subtle areas of human rights law. In Canada, the relatively small volume of jurisprudence has dealt with the more critical 'bread and butter' human rights issues. However, it is useful to consider the experience in the United States, prior to considering the interpretation of our Code. The redressing of an insidious form of discrimination certainly invites consideration of the United States' jurisprudence in this area.

It can also be mentioned that in the amended Ontario Human Rights Code (Bill 7, Royal Assent December 11, 1981, not yet proclaimed in force), there is a specific provision dealing with "harassment" of employees in the workplace:

> s. 4.-(2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status or handicap.

"Harassment" is defined in s. 9(f):

> 9.-(f) "'harassment' means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome;"

This provision is very explicit, and there can be no doubt that under this provision (once Bill 7 is proclaimed and has the force of law) employees have a right to a workplace free from "harassment", and that harassment includes verbal abuse based on prohibited grounds.

As I have said, verbal racial harassment, through name-calling, in itself, is in my view prohibited conduct under the Code. The atmosphere of the workplace is a "term of condition of employment" just as much as more visible terms of conditions, such as hours of work or rate of pay. The words "term or condition of employment" are broad enough to include the emotional and psychological circumstances in the workplace. There is a duty on an employer to take reasonable steps to eradicate this form of discrimination, and if the employer does not, he is liable under the Code. I find on the evidence that the Respondent (its management knowing of the racial name-calling problem) did not take reasonable steps to eradicate such form of discrimination toward the East Indian employees, and specifically, toward the Complainant.

Remedy

The matter of fashioning an effective remedy to deal with the problem of verbal racial harassment in the Respondent's warehouse, is not an easy one. In so far as the Complainant, Mr. Dhillon, is concerned, there was a breach of s. 4(1)(g) of the Code, in that he was discriminated against

with regard to a "condition" of his employment, in that he suffered a continuing derogatory verbal harassment simply because of his race, colour, ancestry, or place of origin. He was treated in a reprehensible fashion, as were the other East Indian workers, in terms of the every-day work environment they endured due to the racial name-calling. While Mr. Dhillon is not at all justified in the anger and profanity he expressed to Mr. Day, his temperament was at least in part due to the stress he suffered from the nature of his work environment which belittled his race, colour, ancestry and place of origin. Ultimately his hostility to this environment was the cause of his dismissal. He is entitled to general damages for his pain and suffering and injured feelings due to discrimination in the "condition" of his employment.

The Inquiry and hearing in itself appeared to constitute a general catharsis with respect to the name-calling in the Respondent's warehouse. (Evidence, vol. VI, pp. 177, 178, 180)".

The Code provides:

> "14c. The board, after hearing a complaint,
>
> (a) shall decide whether or not any party has contravened this Act; and
>
> (b) may order any party who has contravened this Act to do any act or thing that, in the opinion of the board, constitutes full compliance with such provision and to rectify any injury caused to any person or to make compensation therefor."

The problem of racial name-calling and racial slurs in a warehouse such as that of the Respondent is mainly rectified through an educative process initiated by management. The situation before this Inquiry is probably not uncommon in factories or warehouses in urban southern Ontario with a similar racially mixed work force. The situation is novel in terms of being the subject of an Inquiry. I believe management of the Respondent will make a sincere effort, given my decision, to rectify the unfortunate situation in the warehouse and obliterate verbal racial harassment. It is in the best interests of responsible management and the labour force to work togetner to achieve this. Already, there is evidence that the simple fact of the hearing has improved matters greatly. Accordingly, I think it appropriate, given my discretion within the Code, to retain jurisdiction for a period of time following the decision, to give management, all the employees, together with the Ontario Human Rights Commission as both a catalyst and monitor, the opportunity of redressing the situation and removing verbal racial harassment in the Respondent's warehouse. If the Ontario Human Rights Commission is of the view at any point in time that the Respondent is not taking reasonable steps to comply, or on the other hand the Respondent is of the belief that the Ontario Human Rights Commission is being unreasonable in its requests of the Respondent, then the party in question, with notice to the other, may request of me a continuation of the Inquiry for the purpose of me making whatever order, after representations by both sides to me as a tribunal in the usual fashion, that I see fit, to achieve compliance with this decision.

ORDER

1. The Respondent, F. W. Woolworth Company Limited, shall pay to the Complainant, Sucha Singh Dhillon, the sum of one thousand ($1,000.00) dollars as general damages.

2. The Respondent shall take all reasonable steps necessary to achieve the cessation and desisting forthwith of verbal racial harassment within the Respondent's warehouse at 2277 Sheppard Avenue, West, in Toronto.

3. The Respondent shall forthwith constitute an ad hoc Management-Employees Race Relations Committee (hereafter called "the Committee") for its warehouse, consisting of an equal number of three groups: a management group, an East Indian employees group, and a non-East Indian employees group, and the said Committee, together with an ex officio member of the Committee appointed by the Ontario Human Rights Commission from its staff (which member of the Committee is hereafter called the "Commission representative") shall meet together on company time at least once a month for the next four months, or more often if and when requested by the Commission representative, with the Committee's objectives being, first, to establish effective communications on the general issue of inter-race relations within the warehouse, and second, to suggest to the management of the Respondent such reasonable measures

as seem appropriate and necessary from time to time to remove verbal racial harassment from within the Respondent's warehouse, and the Respondent shall implement such reasonable measures as are recommended by the Committee and are feasible from a practical standpoint from time to time.

4. In the event that, in the opinion of the Commission representative the Committee is not functioning in a manner and making such appropriate recommendations as meet the intent of this Order of removing verbal racial harassment within the Respondent's warehouse, and/or the Respondent is not implementing reasonable measures necessary to achieve the intent of this Order, being the removal of verbal racial harassment within the Respondent's warehouse, the Ontario Human Rights Commission may, upon giving written notice to the Respondent, request of this Board of Inquiry that it reconvene to hear such further representations as the Ontario Human Rights Commission considers necessary and the Board of Inquiry deems appropriate.

5. In the event that the Respondent is unwilling or, in its opinion, unable to implement the reasonable measures contemplated by this Order to meet the intent of this Order, being the removal of verbal racial harassment within the Respondent's warehouse, the Respondent may, upon giving written notice to the Ontario Human Rights Commission, request of this Board of Inquiry that it reconvene to

hear such further representations as the Respondent considers necessary and the Board of Inquiry deems appropriate.

6. The Committee constituted by section 3 of this Order shall function as set forth for not less than four months from the date of this decision, and this Board of Inquiry shall remain seized of jurisdiction for six months from the date of this decision to reconvene the Inquiry as contemplated in sections 4 and/or 5 of this Order, and on such reconvened Inquiry, make any such further Order it sees fit, within its powers, in respect of the subject matter of this Inquiry, to implement this decision and, in particular, Section 2 of this Order.

Dated at Toronto, this 12th day of February, 1982.

Peter A. Cumming
Board of Inquiry

result, he denied them services and facilities to which the public is customarily admitted because of race, contrary to section 2(1)(a) of the Ontario Human Rights Code. This would be true even if the Respondent had been justified in excluding the Wan group since it is apparent the connection was based solely on race without the slightest attempt by the Respondent to determine if there was any legitimate basis for making such a connection.

REMEDY

All three Complainants, with one partial exception, testified that they wished no personal monetary compensation as a result of the Respondent's discrimination, but would wish any monetary compensation to go to a charitable human rights organization. They asked only for an apology for themselves, along with some order to prevent the Respondent from discriminating against others. The partial exception was that Mrs. Chen asked for reimbursement of the $19.00 train fare she incurred to attend the hearing. Counsel for the Commission requested a monetary award totalling $500.00 for the three complainants, which they could donate to charity if they wished, together with the $19.00 to reimburse Mrs. Chen's train fare. Counsel also asked for an order that the Respondent post the Commission's human rights placard on the Greygo Gardens premises, provide letters of apology to the individual complainants and a letter of apology to the local Chinese community in general, and give the Commission a letter of undertaking to abide by the Human Rights Code in future.

I have no jurisdiction, of course, to comply directly with the Complainants' desires to have any monetary compensation paid to a charitable organization. The only payment I can order under section 19(b) of the Code

is compensation, which means a payment to the injured party. The parties compensated are free to turn their compensation over to charity if they so desire.

Each of the Complainants testified to having experienced feelings of embarassment and distress as a result of the incident in question. While this evidence would support an award of compensation, it did not indicate such a severity of suffering as would support an award of a very substantial amount. However, a further element was involved in each case which would, in my view, support a substantial award. Each Complainant testified to a loss of trust in other people as a result of this experience, and a feeling of disappointment with respect to an expectation that Canada, to which each had chosen to emigrate, was a country free of such discrimination. While I have some doubts as to the adequacy of the amount, in light of each Complainant's statement that personal compensation was not desired and in light of the Commission's suggestion that a combined award of compensation of $500.00 be made, I would award each Complainant $200.00 for compensation for the elements of mental suffering set out above.

With respect to Mrs. Chen's claim for train fare, I would observe that this item related to the conduct of the hearing, and not directly to the Respondent's wrongful acts. In ordinary civil litigation it would be regarded as a matter of costs, rather than part of the claim for damages. There is no express provision for an award of costs under the Human Rights Code. In my view, the distinction between a compensation for loss and the costs of a legal action is sufficiently well-known that the legislature would have expressly provided for recovery of costs under the Code, had it intended to authorize such an award. Since section 19(b) of the Code provides only for compensation, I

conclude that an award for an item in the nature of costs, such as Mrs. Chen's train fare to attend the hearing, is not within my jurisdiction.

With respect to the Complainants' request for an apology, it is my view that, as long as some more substantial remedy like an award of compensation is justified, it is generally preferable to leave it to the Respondent to volunteer an apology. A forced apology is rarely meaningful anyway. However, the Respondent in this case demonstrated an attitude of being willing to comply only with the strict letter of the law, and not with its spirit. Moreover, in relation not only to the Human Rights Code, but to other laws as well, he revealed some rather serious errors in his understanding of what his legal rights are. For example, his testimony showed that he had no appreciation of the process of conciliation under the Human Rights Code and at one point he tendered the rather frightenly erroneous opinion that he was legally entitled to shoot anyone who did not leave his property when asked to do so. In light of his attitude, I see no prospect that the Respondent will apologize to the Complainants unless he is ordered to do. In view of this I will order him to send them such an apology.

With respect to the Commission's request for an apology to a Chinese community association, the evidence before me does not indicate that the Respondent discriminates against all Chinese persons. It merely shows that, when making decisions about people based on other factors, he takes into account the race and ethnic origins of the people in question. Moreover, no Chinese community association was involved as a party to these complaints. Therefore, it is neither appropriate nor within my jurisdiction to order an apology to any such association.

The matter of a further undertaking by the Respondent to comply with the Ontario Human Rights Code causes me some concern, not in terms of its appropriateness, but rather in terms of its potential effectiveness. It is apparent from the evidence that the Respondent makes decisions about his customers in a highly subjective fashion. While such subjective decision-making is not in itself unlawful, such subjectivety provides an often impenetrable cover for unlawful discrimination. In view of the fact that the Respondent has actually exercised his subjective decision-making in a discriminatory manner, it occurs to me that this might have been a case for an order which would, at least for a limited period, force the Respondent to stop making decisions in this matter. For example, he might have been ordered to provide the Commission with a list of objective criteria to be used in deciding whether to admit people to his premises and to give an undertaking that he would apply these criteria in a uniform manner and not exclude people on the basis of any other criteria. Under such an order, for example, he might have adopted a rule to exclude individuals who damaged his property, but this would not allow him to exclude others whom he associates with such individuals by their race or ethnic origin.

However, such an order raises a number of difficult issues. Since I am not aware of any precedent for such an order under The Ontario Human Rights Code, I conclude that I should not make such an order in the absence of a request for it by one of the parties and the resulting opportunity for the issues to be argued before me at the hearing. The modest request of the Commission for a letter of undertaking that the Respondent will comply with the Code in the future is certainly appropriate and I will so order.

In addition, an order that a copy of the Ontario Human Rights Commission be posted on the Respondent's premises is commonly granted and can have a salutory educational effect. I will, therefore, so order.

DATED at Windsor, Ontario
March 8, 1982

Robert W. Kerr
Board of Inquiry

IN THE MATTER OF THE ONTARIO HUMAN RIGHTS CODE, R.S.O. 1980, c. 340;

AND IN THE MATTER OF the complaint of Mr. Chia-Su Wan against Greygo Gardens and Mr. Frank Peter

AND IN THE MATTER OF the complaint of Mrs. Lee Min Chen against Greygo Gardens and Mr. Frank Peter

AND IN THE MATTER OF the complaint of Mrs. Shun-Shun Soong against Greygo Gardens and Mr. Frank Peter.

O R D E R

These matters coming on for hearing on the 10th and 11th days of February, 1982, before this Board of Inquiry, pursuant to the appointment of Robert Elgie, Minister of Labour, in the presence of counsel for the Commission, the Complainants, and the Respondent, upon hearing evidence adduced by the parties and what was alleged by the parties, and upon finding that the complaint was substantiated by the evidence;

IT IS ORDERED THAT:

(a) The Respondent pay the Complainant Mr. Chia-Su Wan the sum of $200.00 as compensation for injured feelings;

(b) The Respondent pay the Complainant Mrs. Lee Min Chen the sum of $200.00 as compensation for injured feelings;

(c) The Respondent pay the Complainant Mrs. Shun-Shun Soong the sum of $200.00 as compensation for insured feelings;

(d) The Respondent keep posted a placard supplied by the Ontario Human Rights Commission setting out the principles of The Ontario Human Rights

Code in a prominent place near the entrance to any "pick-your-own" vegetable farm operated by him;

(e) The Respondent provide a letter of apology to each of the Complainants;

(f) The Respondent provide a letter to the Ontario Human Rights Commission undertaking that he will in future comply with The Ontario Human Rights Code at Greygo Gardens or any other "pick-your-own" vegetable farm operated by him;

(g) The Respondent send the letters of apology and the letter of undertaking referred to in paragraphs (e) and (f) to Ms. Leith Hunter, counsel for the Commission, at her office, Crown Law Office, Civil Law, 17th Floor, 18 King Street East, Toronto, Ontario, M5C 1C5.

DATED the 8th day of March, 1982.

Robert W. Kerr,
Board of Inquiry.